

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
At Huntington

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132 HEALTH AND WELFARE FUND,
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132 PENSION FUND; INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL NO. 132
APPRENTICESHIP AND SKILL IMPROVEMENT FUND;
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132 ANNUITY AND SAVINGS FUND; and
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132, AFL-CIO,

Plaintiffs,

v.

Civil Action No. 3:19-cv-00732

MOOSEHEAD HARVESTING, INC.
a New Hampshire Corporation,

and

US TRINITY ENERGY SERVICES, LLC
a Texas Corporation,

Defendants.

COMPLAINT

Your plaintiffs respectfully complain and say unto the Court as follows:

1. Jurisdiction of the Court is invoked under the provisions of Section 502 and 515 of the Employee Retirement Income Security Act of 1974, (ERISA), 29 U.S.C. §§ 1132 and 1145, as amended by the Multiemployer Pension Plan Amendment Act (MPPAA), 29 U.S.C. §§ 1132(g) and 1145, and under Section 301 of the Labor Management Relations Act of 1974, (LMRA), 29 U.S.C. § 185.

2. The Plaintiff, International Union of Operating Engineers, Local No. 132 Health and

Welfare Fund (Health Fund), is a non-profit organization operated for the purpose of providing health and welfare benefits to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132 Pension Fund (Pension Fund) is a non-profit organization operated for the purpose of providing pension benefits to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132 Apprenticeship and Skill Improvement Fund (Apprenticeship Fund) is a non-profit organization operated for the purpose of providing training to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132 Annuity and Savings Fund (Annuity Fund) is a non-profit trust organization operated for the purpose of providing annuity benefits to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132, AFL-CIO (Union), is a labor organization representing employees for collective bargaining purposes and is a "Union" as defined by the LMRA. The situs of the Plaintiff funds and the Plaintiff Local Union are within the Southern District of the State of West Virginia.

3. Defendant, Moosehead Harvesting, Inc., is a New Hampshire corporation which, at all times material to this action, was authorized to do business in the State of West Virginia and actively engaged in the construction industry affecting commerce. This Defendant is an "employer" as defined in ERISA.

4. Defendant, US Trinity Energy Services, LLC., is a Texas corporation which, at all times material to this action, was authorized to do business in the State of West Virginia and actively engaged in the construction industry affecting commerce. This Defendant is an "employer" as defined in ERISA.

COUNT 1

BREACH OF COLLECTIVE BARGAINING AGREEMENT AND PLAN DOCUMENTS

5. The foregoing paragraphs are hereby incorporated by reference.

6. At all times material to this action, the Defendants, Moosehead Harvesting, Inc., and US Trinity Energy Labor Services, LLC, were parties to the 2014 National Pipe Line Agreement for the United States of America between the International Union of Operating Engineers and the Pipe Line Contractors Association operating in the United States as currently written and amended, extended or revised by the negotiating parties from time to time, which agreement provided that the Defendants would pay contributions to the Plaintiff Funds and deduct and pay to the Plaintiff Union working dues on behalf of employees covered by the aforesaid National Pipe Line Agreement.

7. The Defendant, Moosehead Harvesting, Inc. has failed to pay the required contributions to the Plaintiff Funds and the administrative dues to the Plaintiff Union for its employees as required by the above referenced National Pipe Line Agreement for all work performed during the months of September, October and November, 2018.

8. Pursuant to the above referenced Plaintiff Funds' Trust Agreements and Collection Policy, and/or 29 U.S.C. §1132(g)(2), the Defendant, Moosehead Harvesting, Inc. is obligated to Plaintiff Funds and Plaintiff Union in the amount of \$75,710.31 for unpaid contributions and administrative dues, together with interest thereon in the amount of \$15,863.14 and liquidated damages in the amount of \$24,522.79 for a total amount owed of \$116,096.24 as of the date of the filing of this complaint.

9. Pursuant to the above referenced National Pipe Line Agreement, Plaintiff Funds' Trust Agreement and Collection Policy, and/or 29 U.S.C. §1132(g)(2)(D), the Defendants are obligated to pay the attorney fees and court costs incurred by the Plaintiffs in this action.

COUNT II

ACTION FOR BREACH OF WAGE PAYMENT AND COLLECTIONS ACT

11. The foregoing paragraphs are incorporated by reference.

12. The Defendant, US Trinity Energy Services, LLC, has a duty to comply with the West Virginia Wage Payment and Collections Act. (West Virginia Code §21-5-1 *et seq.*)

13. West Virginia Code §21-5-7 provides that a prime contractor that has contracted with a subcontractor for the performance of work is civilly liable to the employees engaged in the performance of the work when the Defendant's subcontractor has failed to pay the fringe benefits due for the work performed by Plaintiff's members.

14. To-date, despite numerous requests, the Defendant, US Trinity Energy Services, LLC, has failed to pay the required fringe benefit contributions to Plaintiff, International Union of Operating Engineers Local 132 Trust Funds, for the work performed by its subcontractor, Moosehead Harvesting, Inc.

15. The Defendant, US Trinity Energy Services, Inc., therefore is liable to the Plaintiffs for the full fringe benefits due, including interest, damages, attorney's fees, costs and penalties.

16. A copy of this complaint will be served upon the Secretary of Labor and Secretary of Treasury as required by ERISA, 19 U.S.C. § 1132(h).

WHEREFORE, Plaintiffs pray this Court will:

A. Award judgment to the Plaintiffs against the Defendants for the amount of contributions and dues owed to the Plaintiffs, together with interest and liquidated damages thereon;

B. Require the Defendants to pay the costs of this proceeding, including attorney fees;

C. Award Plaintiffs such other and further relief against the Defendants as to the Court may seem meet and proper.

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ENGINEERS, LOCAL NO. 132, AFL-CIO
By Counsel

/s/ Lawrence B. Lowry

W.Va. Bar No. 2260

Attorney for Plaintiffs

P. O. Box 402

Huntington, WV 25708-0402

Telephone: (304) 529-2434

Fax: (304) 529-6179

E-mail: lblowry@iuoe132.org